EXHIBIT_	_16
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HB	25

TESTIMONY IN OPPOSITION TO HB 25 GENERALLY REVISE ELECTRIC RESTRUCTURING LAWS

Doug Mood Vice-Chairman, Montana PSC January 24, 2007

Mr. Chairman and Members of the Committee,

The Public Service Commission, by a 3-2 margin, has voted to oppose HB 25. But I want to make this next point entirely clear. The Commission is strongly in favor of broad reform of Title 69, Chapter 8. We believe that this legislative session should provide the framework for transitioning NorthWestern Energy from its current status as Montana's sole restructured utility and default electricity supplier, back to an integrated service utility that owns rate-based generation and is traditionally regulated by the PSC. However, HB 25 in its current form is not acceptable to the PSC.

HB 25 retains too much of Chapter 8 and amends it in ways that are neither necessary nor helpful --- if the objective is to move toward a traditional, regulated utility model. The PSC recommends making numerous substantive amendments to HB 25.

One of the PSC's major objections to this bill involves the definitions in Section 6 of "electricity supply costs," "electricity supply service," and "new electricity supply resource." Those definitions, in combination with Section 8 (of the bill), subsection (1), would establish bad and unworkable public policy. This subsection requires the PSC to flow NorthWestern's electricity generation supply costs through a "tracker."

A reasonable argument can be made for allowing a utility to recover certain volatile fuel costs and market based power purchase costs through a monthly tracker. However, it is neither reasonable nor efficient to require tracking of those costs relative to utility-owned generation. The tracker requirement for electricity supply costs would basically require NorthWestern to file the equivalent of a general rate case at the PSC at least once a year. The Commission sees the approval process provided for in 69-8-420 as determining recoverable costs for utility owned

generation for the life of the generation plant. Changes would only occur if the utility could establish to the Commission's satisfaction that extraordinary circumstances warrant a change.

Some of the PSC's other concerns with HB 25 include:

- In Section 12, the requirement that the PSC act on pre-approval requests for generation ownership or lease within 180 days does not provide sufficient time to adequately consider and act on these complex and critically important applications.
- HB 25 fails to eliminate some of the unnecessary provisions and definitions in the current Chapter 8 to more fully accomplish the abandonment of the functionally separate, default supplier statutory framework under which NorthWestern currently operates;
- The electricity supply planning provisions in Section 10 could and should be repealed in favor of the existing integrated resource planning provisions in Chapter 3, Part 12. Those provisions currently apply to MDU and used to apply to Montana Power;
- HB 25 is silent regarding the status of small customers who have chosen a supplier other than NorthWestern.
- The repeal of 69-8-403, MCA, would invalidate the PSC's default electric supplier procurement guidelines, ARM 38.5.8201 to 8229.

I refer you to the attachment to my written testimony for the PSC's detailed comments and concerns about various provisions of this bill.

Again, thank you Mr. Chairman and committee members for the opportunity to testify here today. I believe that the reintegration of NorthWestern may be the single most important issue to come before this legislative session. For that reason, getting the details right is all the more important. I am aware that a great deal of work has already been done to that end.

I believe that there are currently four Chapter 8 reform bills. HB 434 contains the changes to title 69, chapter 8 that the Public Service Commission believes are necessary to best accomplish the task. SB 195 takes still another approach. LC 1103 is close to being introduced and is the product of long and serious negotiations by various parties. I urge the Committee to take a long, hard look at all of these bills to ensure that the statutory framework for reintegration

that emerges from this legislative session fairly balances the needs of NorthWestern and ratepayers and incorporates sound regulatory policy going forward.

Thank you for the opportunity to comment.

PSC COMMENTS & RECOMMENDED CHANGES REGARDING HB 25

<u>Section 1</u>. Amends the definition of "transmission services provider" in Title 15 to remove the reference to a definition of the term in Title 69, Chapter 8, that is eliminated in this bill.

<u>PSC comment</u>: It is redundant for the amended definition of "transmission services provider" to include an "entity" in addition to a "person" because the term "person" immediately preceding this definition is already defined to include entities.

<u>Section 5</u>. Eliminates most of Chapter 8's existing legislative findings and policy, but retains policy declarations that adequate, reliable electricity must be provided to small consumers at the lowest long-term total cost and that the financial integrity of electrical utilities must be fostered.

PSC comments: The PSC recommends repeal of this section altogether. The aim of the Chapter 8 reform bills, including this one, is to return NorthWestern Energy to a full-service utility that is subject to the traditional public utility regulation of Title 69, Chapter 3, which makes it unnecessary to include any special legislative declarations in Chapter 8. The declaration that adequate, reliable service must be provided to small customers is more narrow than the requirement in 69-3-201 that such service must be provided to all utility customers. The definition of "small customer" is also deleted in Section 6. The declaration that the utility's financial integrity must be fostered was understandable in the context of SB 390 back in 1997 because it was feared that restructuring would result in stranded costs and other possible adverse financial impacts on the utility. However, inclusion of this declaration in HB 25 could elevate this regulatory objective above all others.

Section 6. Amends the Definitions section of Chapter 8.

<u>PSC comments</u>: The PSC has several major concerns about this section, as enumerated below. The PSC recommends deleting the identified definitions.

- 1. The definition of the term "electricity supply costs" is extremely problematical for these reasons:
- The term is apparently defined in order to identify the costs in Section 8 of the bill for which the PSC is required to establish a cost recovery mechanism known as a "tracker." The PSC has used trackers for years to provide timely recovery of a utility's volatile costs that are beyond its control, such as fuel and purchased power costs; however, a tracker is not appropriate for known, stable and predictable utility costs. This problem is exacerbated by including in this definition the revenue requirement for utility-owned or leased generation facilities, which includes capital costs, operating costs (e.g., maintenance, labor, administration), and unspecified other costs that should not be recovered in a tracker, as well as the inclusion of the costs of "electricity supply service," which is subsequently defined so broadly as to potentially include every aspect of electric utility service.

- In any case, there is no reason to define the term "electricity supply costs." The PSC has not needed a definition of supply costs in its long history of identifying and calculating relevant utility costs as an integral part of the PSC's duty to establish just and reasonable rates that protect consumers and allow utilities to recover prudent costs and earn a reasonable return. This bill is meant to transition NorthWestern to the Chapter 3 traditional regulatory framework it was subject to prior to restructuring the same framework that applies to MDU and Energy West. Chapter 3 does not include a definition of this term.
- 2. "Electricity supply service" is defined as "the provision of electricity supply and related services." The definition's inclusion of "and related services" makes the term unworkably broad.
- 3. The definition of "new electricity supply resource" includes both utility power purchase agreements and generation plant ownership, which results in both arrangements inappropriately being treated the same for regulatory purposes in the pre-approval section of the bill (Section 10).

<u>Section 7</u>. Amends the customer choice section to: eliminate provisions regarding the transition to customer choice; prohibit a large choice customer or new large customer from returning to or obtaining electricity supply from a public utility unless the utility agrees to provide it after the large customer demonstrates other customers' rates will not be adversely affected as determined by the PSC; prohibits a returning or new large customer that obtains utility electricity supply service from switching to another electricity supply service provider; and maintains the MDU exemption from most of Chapter 8's provisions.

<u>PSC comments</u>: The public utility should be required to supply electricity to a large customer that demonstrates there would be no adverse impacts to the utility's customers as determined by the PSC if the large customer obtained electricity supply from the utility. Subsection (1)(b) provides that the utility may agree (or not) to supply electricity to the large customer in this instance.

Also in (1)(b), the PSC prefers that a large customer seeking public utility supply service be required to demonstrate to the PSC that provision of electricity supply by the utility to the large customer would produce "net utility system benefits over the long term," which is a broader and more affirmative standard than the showing in HB 25 of no adverse rate impacts.

There should be a provision in this section concerning small customers who have moved to choice to resolve the issue of their ability to return to public utility supply service. In addition, the PSC bill (HB 434) has a provision in this section that says "nothing in this section affects customers' rights and obligations related to net metering, cogeneration, etc." HB 25 does not include a provision like this, but should.

<u>Section 8</u>. Amends 69-8-210, MCA, to delete most of the section's provisions, except for the requirements that the PSC establish an electricity cost tracker and that public utilities offer a "green power" option to customers.

<u>PSC comments</u>: The PSC urges the deletion of subsection (1), which is the provision that requires the PSC to establish a tracker mechanism for NorthWestern's prudently incurred electricity supply costs. See the comments above on Section 6's overly broad definition of "electricity supply costs."

The PSC strenuously objects to the idea of everything flowing through a monthly electric tracker. It is bad policy because the purpose of effective utility regulation is to only allow legitimate costs to flow into rates. The purpose of regulation is not to pass through all costs to customers. This tracker requirement for electricity supply costs would have the impact of a general rate case each month. Not only is that bad policy, but it is administratively impossible because there simply would not be time to review and rule on each tracker filing.

While it is reasonable to use a tracker to allow a utility to recover certain volatile fuel costs and power purchase costs, it is neither reasonable nor efficient to require tracking of all kinds of costs related to utility-owned generation. In addition, the PSC has established natural gas trackers without explicit statutory authority for many years. This provision is bad policy and unnecessary when the objective of this bill is to return NorthWestern to the traditional regulatory model that has demonstrated over many years its effectiveness in balancing the utility's and ratepayers' interests.

<u>Section 10</u>. Amends the resource planning and procurement provisions of 69-8-419, MCA, to remove references to "default supply" and replace the term "default supplier" with "public utility."

<u>PSC comments</u>: This NorthWestern-specific resource planning section should be repealed because there are very similar existing statutory provisions in Chapter 3, Part 12, regarding electric utilities' integrated resource planning (IRP). MDU has been subject to the IRP requirements for many years, as was Montana Power (now NorthWestern) prior to restructuring.

<u>Section 11</u>. Amends another resource planning section of 69-8-420, MCA, to remove references to "default supply" and replace the term "default supplier" with "public utility."

<u>PSC comment</u>: Repeal this section for the same reasons that Section 10 should be repealed.

<u>Section 12</u>. Amends 69-8-421, MCA, to extend the preapproval provisions that exist now for power purchase agreements to the broader category of "new electricity supply resources," which is defined to include "an equity interest in a new or existing electric energy generation facility" as well as power purchase agreements.

<u>PSC comments</u>: Section 13 of HB 434 (the PSC bill) does a better job of amending 69-8-421 to provide for regulatory treatment of NorthWestern's resource procurement activities, which under both bills could include ownership of generation, than does this section of HB 25. Our specific concerns include:

- 1. The PSC has long-standing concerns regarding preapproval of utilities' resource acquisitions, but has conceded the point in the PSC bill (HB 434) in recognition of NorthWestern's strong preference that preapproval continue to be an option during its transition to a traditionally regulated vertically integrated utility. However, because the definition of "new electricity supply resource" includes both power purchase agreements and utility ownership or lease of generation, HB 25 extends the existing requirement that the PSC act on pre-approval requests for power purchase agreements within 180 days to pre-approval requests for generation ownership or lease. One hundred eighty days is simply not sufficient time to adequately consider and act on a request for pre-approval of a new generation plant.
- 2. Subsection (2)(c)(iii) requires a PSC preapproval order to include a finding that certain contract terms related to the price, quantity and duration of the new electricity supply resource are reasonable. This provision is appropriate in the current law that concerns preapproval of power purchase agreements, but it not appropriate when a contract is not involved, as would be the case when the new supply resource is utility owned or leased generation.
- 3. Subsection (5) requires the PSC to judge the prudence of NorthWestern's resource procurement actions for which the utility has not sought preapproval in the utility's cost recovery filings pursuant to 69-8-210, MCA. The PSC recommended in its comments on Section 8 that the cost tracker requirement for electricity supply costs in 69-8-210 be deleted. For the same reasons, we recommend deletion of this subsection in Section 12.

Section 14. Repeals numerous sections of Chapter 8.

<u>PSC comments</u>: Repeal of Section 69-8-403 will result in invalidation of the PSC's current default supplier planning and procurement rules that were adopted pursuant to subsection 8 of this section. The PSC bill keeps 69-8-403(8).

Section 69-8-411, which requires a distribution services provider like NorthWestern to provide nondiscriminatory access for electricity suppliers to the utility's distribution facilities, should not be repealed. The PSC bill, HB 434, keeps the nondiscriminatory access provisions to ensure that non-utility generators and electricity suppliers continue to have fair and open access to NorthWestern's transmission and distribution facilities. (See Section 17 of HB 434.)